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In re Application of
GILES, Richard Courthope, et al.
Application No.: 09/936,280
PCT No.: PCT/AU00/00171
Int. Filing Date: 10 March 2000
Priority Date: 10 March 1999
Attorney Docket No.: 2373/103
For: TREE HARVESTING APPARATUS

DECISION ON
PETITION
UNDER 37 CFR 1.181

This decision is in response to "Petition to Reset Period For Response Due to Non-Receipt of Action," filed with the United States Patent and Trademark Office on 05 November 2002. It has been treated as a petition under 37 CFR 1.181.

BACKGROUND

On 10 March 2000, applicants filed international application PCT/AU00/00171. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 14 September 2000. On 28 September 2000, applicant filed a Demand for international preliminary examination, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty month period for paying the basic national fee in the United States expired on 10 September 2001.

On 10 September 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 30 October 2001, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905), indicating that a declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

On 13 August 2002, applicants submitted "Completion of Filing Requirements," indicating that applicants had not received a Notification of Missing Requirements accompanied by an executed declaration.

On 05 November 2002, applicants submitted the instant petition under 37 CFR 1.181, accompanied by a copy of the executed declaration.

On 13 March 2003, the Office mailed Notice of Acceptance (Form PCT/DO/EO/903) indicating that the application's 35 USC 371 dates were 13 August 2002.

DISCUSSION

The showing required to establish nonreceipt of an Office communication is set forth in the notice entitled *Withdrawing the Holding of Abandonment When Office Actions Are Not Received*, 1156 O.G. 53 (Nov. 16, 1993). The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Item (1) has been satisfied.

Items (2) and (3) have not been satisfied.

The declaration incorrectly identifies the filing date of the international application. Though declaration complies with 37 CFR 1.497(a)-(b), it does not comply with 37 CFR 1.63. Additionally, the declaration appears complete, but it is numbered page 1 of 9 through page 4 of 9. A new declaration in compliance with 37 CFR 1.497(a)-(b) and 37 CFR 1.63 is required.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The Notification of Acceptance mailed 13 March 2003 is **VACATED**.

The application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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